

Motion to Dismiss with leave to Amend

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

Vance S. Elliott
Plaintiff

The San Francisco
Rent Stabilization
and Arbitration Board
Defendants

Case No CV 08-2552 SBA

BC

MOTION TO DISMISS WITH LEAVE TO AMEND

Your Honor,

The defendant, The San Francisco Rent and Arbitration Board, has asked me, plaintiff appearing pro se, to take notice that on September 16, 2008 at 1:00 pm, in Courtroom 3 at 1301 Clay Street, Oakland, California, before the Honorable Sandra B. Armstrong, defendant City and County of San Francisco shall move for dismissal (of my Motion for Summary Judgment) under Federal Rules of Civil Procedure 12(b)(1).

The defendant, The City and County of San Francisco, seeks ~~dismissal~~ dismissal on the ground that I, the plaintiff, lacks standing because defendant's Uniform Hotel Visitor ~~policy~~ policy did not cause my alleged injury and the Court is therefore unable to redress it.

Your Honor, the Policy in question ^{was} ~~is~~ issued by the San Francisco Residential Rent Stabilization and Arbitration Board on the authority of San Francisco Administrative Code Section 41D.3(b).

This Ordinance requires that the Uniform Visitor Policy ^{is to} enhance the safety and welfare of guests and occupants of Residential Hotels. (Your Honor, please notice that the term 'occupant' is used here instead of the more descriptive term 'resident') the safety and welfare of residents and their guests of these Hotels; and that this Policy ensures the dignity and personal freedom of guests and occupants of residential Hotels and to incorporate and be consistent with the provisions of Police Code Section 919(a) This Section of the Police Code I presume, ~~the~~ ^{SRU} ~~the~~ refers to the requirement that ~~residents~~ the guests of ~~residents~~ ^{SRU} maintain a log book and present approved California I.D.

residents sign

~~priority hearing~~

prior ~~to~~ entering the premises of Residential Hotels, ~~therefore~~

In ~~their~~ Motion to Dismiss, Case No CV 08-2352 SBA, by citing ~~the~~ San Francisco Administrative Code, Section 41D, 4(a)(1)-(6), ~~the~~ ^{me} ^{argue} ^{Visitor Policy} defendants ~~argue~~ that their Uniform balances the above cited goals

by requiring SRO owners (Please note that here ~~the~~ ^{here} term 'Residential Hotels' has been changed to SRO Hotels') and ~~there~~ ^{operators} ^{to} allow at least eight overnight guests per tenant per month.

I refer your Honor to the text of The ^{SF} Administrative Code, Section 41D, 4(a)(1)-(6). Nowhere ^{in that text} is there any ^{mention} ^{requirement} of a ~~requirement~~

ment tenants of SRO ~~Hotels~~ be allowed eight overnight visitors per month. ^{Therefore} ^{this claim is made up by the defendants out of} ^{white cloth}

But, ^{Boards} the actual text of The ~~present~~ Uniform Visitor Policy does state that tenants of SRO Hotels are allowed ^{8 guests} ~~per~~ per

month. ^{The} ^{their} previous statement of the defendants, that ~~the~~ Hotel

Policy enhances the safety and welfare of ~~the~~ ^{SRO} ~~tenants~~ ^{tenants}

and that ~~it~~ ^{their policy} balances these goals by ~~allowing~~ ^{allowing 8} visitors per tenant, ^{per month} ^{does not}

reality; that ~~the~~ ^{does not} ^{possibly} describe ~~the~~ ^{this} Visitor Policy ^{that} ^{part} of the ~~Uniform~~ ^{Uniform} Visitor Policy ~~is not~~ ^{denies the right of tenants} of SRO Hotels ^{he} ^{constitutively} ^{guarantees} ~~Equal~~ ^{Equal}

Protection of the ~~the~~ ^{laws}

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In the case of YICK WO v HOPKINS, the Supreme Court of the United States, Mr Justice Mathews delivered the opinion of the Court.

He Wrote: The ordinance in question divides the ^{owners} ~~others~~ and occupiers, (Chinese appellants), ^{into} ~~into~~ two classes, not having respect to their personal character and qualifications, but merely an arbitray line, on one side of which are those who are permitted to pursue their industry ^{(the} ~~the~~ laundry business) by the mere will and consent of the ^{superior} ~~superior~~ and on the other those from ^{whom} ~~whom~~ that ^{consent} ~~consent~~ is withheld, at their mere will and pleasure. And both classes are alike only in this: that they are ^{benefits} ~~benefits~~ at will, under the supervisors, of their means of living. The ordinance, therefore, also differs from the not unusual case, where discretion is lodged by law in public officers or ^{holders to} ~~holders to~~ grant or withhold ^{licenses} ~~licenses~~, when one of the conditions is that the appellant shall be a fit person for the exercise of the ^{privilege} ~~privilege~~ because, in such cases the fact of fitness is submitted to the judgement of the officer, and calls for ^{creation} ~~creation~~ the exercise of a discretion of a judicial nature.

118 ~~U.S.~~ 356, 6 Sup Ct 1064, 39 L Ed 220 ~~1866~~ (1866).

This ~~an~~ opinion is germane to my Motion to Dismiss with Leave to Amend, because it must be obvious to you, Your Honor, that the Uniform Visitor Policy, ^{Task Force to write a Policy} ~~a~~ a creation of the Board of Supervisors, who, responding to the request of the ~~board~~, passed a resolution, (866-99) creating an SRO Visitor Policy which, as we have seen, denies the Equal Protection of the Laws to residents of SFO hotels. ^{These} ~~These~~ public officers of this City deemed ~~the~~ residents of SRO hotels unfit to have the freedom to have visitors at times and hours of their own choosing. Unfit! How are they unfit? We have here a case of 'respectable people'

4.

^{Judgement, i.e.}
exercising their personal ~~rights~~ that we, who live in SRO hotels,
are not fit to have the same privileges that they themselves enjoy!

Therefore I petition Your Honor to ^{we} deny, with prejudice, ^{NOTICE OF}
MOTION AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION
^{made by}
~~XXXXXXXXXX~~ the defendants.

Vance S. Elliott
Counsel Pro se,